IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3570 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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OSWAL MAHAJAN

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3570 of 1991

MR JIVANLAL G SHAH for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1

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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 13/03/2003

ORAL JUDGEMENT

The present petition is filed against the order of Gujarat Revenue Tribunal in Revision Application No.TEN.B.K.28/1987 by which the Tribunal has rejected the

Revision Application filed by the petitioner against the order and judgement of the Deputy Collector, Anjar rejecting an appeal filed by the petitioner before him against the order of Mamlatdar and ALT, Bhachau, who has held that the petitioner Trust held 64-74-87 hectares land in excess of the ceiling limit fixed under the provisions of the Gujarat Agricultural Land Ceiling Act, 1960.

2) The facts giving rise to the present petition are that the petitioner-Trust is a public trust and its members and/or beneficiaries are persons belonging to Oswal community in the District of Kutch. However, the said Trust was not registered as a public trust and therefore, the management of the affairs of the Trust was being done by a committee appointed by the members of the Trust from time to time.

3) The petitioner-Trust had acquired agricultural land in village Bharodiya. Some of the lands (in all ten survey numbers) out of the land acquired by the petitioner-Trust are in possession of some other persons and are cultivated by them and therefore, such lands are not liable to be included in total holding of the Trust for the purpose of the Act of 1960. However, the Mamlatdar and ALT, Bhachau issued a notice on the erstwhile manager of the petitioner-Trust as to why certain area of the land, which was showing in the revenue records in the name of the Trust, should not be declared as surplus land in as much as the petitioner-Trust was holding land, which was in excess of 50 acres of land, which a person under Section 6 of the Act of 1960 could hold. In response to the said notice, it was contended on behalf of the Trust that in the revenue records, the Trust was shown to be the occupant of 25 Survey numbers, the total area whereof admeasured to hectares 68-36-09. It was further contended that some of the lands were in the possession of other persons, who were cultivating the said lands. It was further contended that however, the area comprised in three survey numbers, namely, Survey No.728, 164 and 750/3 were excluded from the total holdings of the petitioner. The petitioner-Trust was not liable to be held to possess or own lands in excess of ceiling area. Despite this fact, the Mamlatdar and ALT did not issue any notice on the persons holding the land of above survey numbers and on the basis of entries made in the revenue record, the Mamlatdar and ALT held that the petitioner-Trust was liable to be declared as holding hectares 46-50-77 in excess of ceiling area. In order to avoid the contravention of the provisions of the Bombay Provincial

Fragmentation and Consolidation of Holding Act, the petitioner-Trust was liable to be held as holding hectares 46-74-87 in excess of the ceiling area. The Mamlatdar has passed this order on 30th September, 1981.

4) Being aggrieved by the said order of Mamlatdar and ALT, the petitioner filed an appeal being Ceiling Appeal No.6/1982 before the Deputy Collector, Bhuj. The Deputy Collector vide his order dated 30th June, 1982 rejected the said Appeal on the ground that the Appeal was barred by limitation and also on the ground that even on merits the order passed by the Mamlatdar and ALT was not assailable in appeal.

5) Being further aggrieved and dissatisfied by the said order of the Deputy Collector, the petitioner has preferred a revision application being No.TEN.B.K. 61/1982 before the Gujarat Revenue Tribuna, Ahmedabad. The Tribunal, vide its order dated 21st March, 1984, had held that it prima facie appears to be the ownership of the Oswal community and that it had made an application under Section 63 for obtaining exemption from the provisions of the Act of 1960. The Tribunal has further held that the community as a whole, was interested in the outcome of the inquiry and hence the Tribunal remanded matter back to Mamlatdar and ALT for reconsideration and take decision after issuing notices to the parties, i.e. Oswal Mahajan and Trustees and representatives of the State Government. It is further stated that on remand the matter came before the Mamlatdar and ALT for retrial of the case and on the basis of the evidence of Ratan Kara Satara and the Talati-cum-mantri, Secretary, who was summoned to produce the revenue records, the Mamlatdar and ALT held that the plea advanced by Ratan Kara Satara that several survey numbers were in possession of and cultivated by the persons, could not be accepted in view of the evidence given and record produced by Talati-cum-mantri. The Mamlatdar and ALT has further held that the petitioner-Trust was in possession of land, which was in excess of ceiling area and this excess land admeasured 46-74-87. This order was passed by the Mamlatdar on 30th September, 1981. Again an appeal was preferred by the petitioner before the Deputy Collector, who rejected the said appeal with an observation that information in regard to the office bearers of the Trust was not available and that there did not appear any reason for interfering with the order of the Mamlatdar. The said order was passed by the Deputy Collector on 28th January, 1985.

6) The petitioner has further taken up this matter

before the Gujarat Revenue Tribunal, in revision application No.28/1987. The Tribunal vide its order dated 29th March, 1990 rejected the said application on the ground that it was barred by limitation and even on merits holding that the trustees to whom the notice had been sent did not remain present before Mamlatdar and ALT and that contention that certain lands were not in possession of the Trust but in possession of the individuals was not convincing as the physical possession of others did not affect the holdings of the trust. It is this order of the Tribunal, which is under challenge in the present petition.

7) Heard Mr.Harshad Shah for Mr.J.G.Shah, learned advocate appearing for petitioner and Mr.M.A.Bukhari, learned Assistant Government Pleader appearing for respondent.

8) It is contended by Mr.Shah, learned advocate for the petitioner that the Tribunal has made an error in not accepting the contention advanced on behalf of the petitioner that delay in filing the proceedings should not result in injustice to a party filing an appeal or revision, particularly, when it appears that such party had no intention of relinquishing its claim in the property which is subject matter of dispute. He has further submitted that the Tribunal has also committed an error in not taking the broad view on the question of limitation, as per the settled legal position. He has also submitted that the Tribunal's finding on the question of limitation has caused grave injustice to the petitioner-Trust and therefore, the said finding is not to be sustained. Mr.Shah has further submitted that the Tribunal has also committed an error in not accepting the contention advanced on behalf of the petitioner that about ten survey numbers out of total survey numbers shown to be in occupation of the petitioner-Trust, were not in the possession of the petitioner-Trust but were in possession of and cultivated by different persons. He has further submitted that despite the fact that names of such persons having been disclosed before the Mamlatdar, he did not give any notice to the said persons and did not ascertain the facts stated by the manager of the Trust. Mr.Shah has further submitted that the Tribunal has not correctly appreciated the fact that the evidence of its manager Ratan Kara Satara was not contradicted in any manner and nothing was brought out in the course of examination, which would render the plea advanced by him, either false or unacceptable. He has further submitted that the evidence of Talati-cum-mantri, Secretary could not have been accepted by the authorities as it was

merely based on the entries made in the revenue records. He has further submitted that there is a settled legal position to the effect that the entries made in the revenue records do not provide undisputable evidence in regard to the facts stated in such entries and that the evidence emerging from such entries is rebuttable.

9) Mr.Shah, learned advocate for the petitioner has further submitted that the land held by the petitioner-Trust could not be said to be the land held by a person as the land was indisputably held by Oswal Mahajan having numerous membership. Mr.Shah has further submitted that no opportunity was given to the persons, who are shown to have interest in the property either as lessees or otherwise. It was incumbent upon the Mamlatdar and ALT, therefore, to issue notice on those persons and to ascertain as to whether they have any claim in the property or any part thereof. The failure of the authorities below in this regard has resulted in augmentation of the holding of the petitioner body, which was not at all justifiable and therefore, the impugned orders deserve to be quashed and set aside.

10) This Court has issued notice on 14-6-1991 and passed an order of status-quo in respect of the possession of lands on 22-7-1991. The petition was, thereafter admitted on 21-8-1991 and status quo was ordered to be maintained.

11) This matter has come up for final hearing before this Court on 21-7-2000. This Court (Coram:C.K.Buch,J.) has directed learned Assistant Government Pleader to take necessary steps to verify the following facts:

(1) What is the position as to the actual possession of lands of all the survey numbers considered by the Mamlatdar and ALT in aforesaid Land Ceiling case.

(2) Whether 10 different survey numbers were shown by the petitioner to the Mamlatdar and ALT alleging that those survey numbers are occupied by the other persons than the petitioner trust or its Manager, Agents or Servants ?

(3) Learned AGP Mr.Mankad should also bring before this Court the names of the trustees of the present trust with the help of Asstt.Charity Commissioner having jurisdiction over Taluka:Bhachau of District:Kutch.

12) Pursuant to the said order, affidavit in reply was filed by the Mamlatdar, Bhachau, wherein it was stated that the lands declared as surplus by the

authorities were totally held by the petitioner-Trust and that the petitioner was in the actual possession of the said lands. It was further stated that the petitioner's contention that the land of ten survey numbers were not in their actual possession, was not correct as the correct fact was that out of the said ten survey numbers, only the land of three survey numbers were being cultivated by other persons and these three persons were not cultivating the said lands legally. It was further stated that other three persons were neither tenants nor deemed purchasers as there was no such nomenclature in the village form No.7/12 and hence it could not be presumed that the petitioners were not in actual possession of the land of 25 survey numbers. It was further stated in the affidavit in reply that after the dismissal of the revision preferred by the petitioner before the Gujarat Revenue Tribunal and after the period of limitation for preferring the Special Civil Application was over, the surplus lands have been entered in the name of Government and thereafter, the Deputy Collector, Anjar vide his order No.Jamin.Vashi-Fajal-1249/1991 dated 25-3-1991 has granted the said land to Bhachau Taluka Anusuchit Jati Kheti Sahakari Mandali Ltd., before passing the order of issuing notice by this Court on 14-6-1991.

13) The petitioner has thereafter filed affidavit in rejoinder along with which the petitioner has filed the affidavits of the persons, who are in actual possession of the land in dispute since 1970 or thereabout and on the basis of the said affidavits, it was contended that the land comprised in the said survey numbers cannot be considered to be the land in actual possession of the petitioner-Trust for determination of its holding. The petitioner has also given the details regarding the names of the persons, who are in possession of the concerned survey numbers with its area. These details are as under:

| Sr. No. | Name of the Purchaser | Survey No. | Area |
|---|---|---|---|
| 1. | Bharmal Kaya | 750/3 | 0-88-02 (about 2 1/2 acres) |
| 2. | Thawar Maya | 758/3 | 1-20-20 (about 3 acres) |
| 3. | Narsinh Raghavji Dedia | 870/2 | 1-09-72 (about 2 1/2 acres) |
| 4. | Nayan Harji Rabari | 709/2 | 1-22-42 (3 acres) |
| | | 729 | 3-33-87 (8 1/2 acres) |

14) It was stated by the petitioner that the aforesaid persons are still alive and they are cultivating the aforesaid lands as owners. Over and above this, it was further contended that the some survey numbers were sold. The land of some survey numbers was sold to the following persons, who have died and at present their heirs are in possession of the said lands.

| Sr. No. | Name of the heir | S.No. | Area |
|---|---|---|---|
| 1. | Gala Kara Hardhor (as heir Ratansibhai the present occupant) | 651/2 | 0-57-13 (about 2 1/2 acres) |
| 2. | Arjan Akha (as heir of Nanjibhai) | 677 | 3-86-18 (about 9 acres) |
| 3. | Dagla Bechar Gola (as heir Ramanikbhai) | 683 | 1-80-08 (about 5 acres) |
| 4. | Punja Samiya Dedhia (as heir of Nodhabhai) | 814/1 | 1-30-51 (about 3 acres) |
| 5. | Gagji Kara Gala (as heir of Laljibhai) | 154 | 2-90-36 (about 7 1/2 acres) |

15) It was further stated in the affidavit in rejoinder that the aforesaid lands were required to be sold to the aforesaid persons because the Trust wanted to build a CHABUTARA for providing resting place for the birds and for feeding them. It was further stated that the interim order was passed by this Court after issuance of the notice to the respondents and its service on them and therefore, there was no likelihood of the possession of the disputed survey numbers having been taken from the petitioner by the concerned authority and the distribution of the alleged survey's land to anyone else. It was further stated that on or about 2nd August, 2000 the Talati of the village had come to the deponent of the said affidavit in rejoinder to record his statement and the said Talati has asked him one the Trust continued to be in possession of the land in dispute, which was found to be surplus and in response to the said question it was stated to him that the said lands were in possession of the Trust. The possession thereof had never been taken from the Trust and today also the land was in possession and cultivation of the Trust. The averment made in the affidavit in reply was, therefore, absolutely false and denied by the petitioner.

16) Since there are different versions with regard to the possession recorded by the respondent-authorities, as well as by the petitioner and since the earlier order passed by this Court on 21-7-2000 was not fully complied with by the respondent-authorities, this Court

(Coram:B.J.Shethna, J.) has passed an order on 17-1-2002 directing the respondent-authorities to state on oath the details as desired by this Court in its order dated 21-7-2000.

17) Again an order was passed on 23-1-2003 and one more opportunity was given to the respondent-authorities to clarify the issues raised by this Court vide order dated 21-7-2000. Pursuant to the said order, an affidavit in reply is filed today, wherein it is stated that due to earthquake on 26-1-2001, Bhachau area was badly affected and, therefore, verification of the facts as directed by this Court in the order dated 21-7-2000 could not be carried out. It was further stated that the actual possession of the land, which are declared as surplus by Mamlatdar and ALT in the ceiling case are vested in the Government. Along with the said affidavit in reply Form No.7/12 in respect of ten survey numbers in question from the year 2002-2003 were produced, which show that the said lands are vested in the Government and the actual possession of the said lands are also with the Government. With regard to question No.2 raised by this Court in its order dated 21-7-2000, it was submitted that the lands in question are in the possession of the Government and the record also shows that the petitioner-Trust is not the land holder. With regard to question No.3, names and addresses of the Trustees as per the letter dated 7-7-2002 were given and the said letter was also annexed along with the said affidavit in reply.

18) Mr.M.A.Bukhari, learned AGP appearing for the respondent-authorities submitted that in view of this affidavit in reply filed today, it becomes clear that the lands are already vested in the Government. Even otherwise all the three authorities have given concurrent finding, which cannot be disturbed by this Court, while exercising its extraordinary writ jurisdiction under Article 226/227 of the Constitution of India. He has further submitted that the petition be dismissed with costs.

19) I have heard Mr.H.J.Shah, learned advocate for the petitioner and Mr.M.A.Bukhari, learned AGP appearing for respondent-authorities. I have also considered the submissions made by them on behalf of the respective parties. I have further gone through the records produced before this Court, including the documents attached with the petition, as well as affidavit in reply, affidavit in rejoinder and further affidavit in reply filed today before the Court. While going through all these records, I found that there are conflicting

versions canvassed by the parties before this Court. Mamlatdar, Bhachau in his affidavit in reply filed on 25th August, 2000 has stated that the land in question have been entered in the name of the Government and thereafter, the Deputy Collector, Anjar vide his order dated 25-3-1991 has granted the said lands to Bhachau Taluka Anusuchit Jati Kheti Sahkari Mandali Ltd. The petitioner, however, in the affidavit in rejoinder filed by Velji Hirji on behalf of the petitioner has submitted that the possession of the lands in question had never been taken from the Trust and the Trust is in possession and cultivation of the said lands even today, i.e. on the date of filing of affidavit in rejoinder on 22nd September, 2000. The Trust has also annexed affidavit of about 11 persons, who in terms stated that they are in possession of the respective lands and they have been cultivating the said lands since years. It is the case of the petitioner right from the beginning that some of the lands are held by other persons and they have been cultivating the said land. Despite this fact no opportunity was ever given by the authorities to these persons, even though they are having interest in the said land. Even in the affidavit in reply filed by Mamlatdar, Bhachau today, it is stated that the entire land is vested in the Government and revenue records produced before the Court along with affidavit in reply show that Government's name was entered in the said records as occupier of the land. However, it appears that the averments made in this affidavit run contrary to the averments made in the earlier affidavit made by Mamlatdar, Bhachau, which says that the land was given to Bhachau Taluka Anusuchit Jati Kheti Sahakari Mandali Ltd., pursuant to the order passed by the Deputy Collector, Anjar on 25-3-1991. If the land is given to the said institute, it cannot be said to be in possession of the Government and even otherwise, said institute's name does not appear in the record of rights. Since the factual position with regard to the exact status of the land is not clear and there are different versions about the said land, I am of the view that the matter requires further inquiry and investigation. Even otherwise, affidavits of about 11 persons were filed by the petitioner for the first time before this Court. They were never there before the authorities below, though the contention was very much raised before the authorities. If these persons are really in possession of the land in question they are undoubtedly interested in the outcome of the present proceedings and without hearing them it cannot be finally decided. Keeping in mind, the entire facts and circumstances of the case and after considering the records and evidence produced before this Court, I

quash and set aside the impugned orders passed by the authorities below and direct the Mamlatdar and ALT to decide the whole issue afresh, in the light of the observations made hereinabove and also after giving appropriate opportunity not only to the petitioner but also to all the persons whose affidavits are filed before this Court and who are said to be in possession of the lands in question. Till this exercise is over, the order of status quo passed by this Court earlier would continue.

20) It is made clear that if the petitioner-Trust or any other person having interest in the land is aggrieved by the order passed by the Mamlatdar and ALT with regard to the lands in question, it is open for them to challenge the said order before the appropriate authority.

21) With the above observations, this petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(K.A.Puj, J.)
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